

AMENDMENTS TO CHILD WELFARE

2000 GENERAL SESSION

STATE OF UTAH

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AN ACT RELATING TO CHILD WELFARE AND ADOPTION; REQUIRING THE CONSUMER HEARING PANEL TO ESTABLISH DEFINED PROCEDURES; AMENDING PROCEDURES RELATING TO FOSTER CARE CITIZEN REVIEW BOARDS; REQUIRING COURT REPORTS TO FOSTER CARE CITIZEN REVIEW STEERING COMMITTEE; LIMITING WHO MAY ADOPT; PROVIDING A SPECIFIED PREFERENCE REGARDING FOSTER CARE AND ADOPTIVE PLACEMENTS OF CHILDREN IN DCFS CUSTODY; DESCRIBING THE DCFS POLICY BOARD'S AUTHORITY REGARDING ADOPTION AND FOSTER CARE PLACEMENT; AND PROVIDING AN EFFECTIVE DATE.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

- 62A-4a-102, as last amended by Chapter 329, Laws of Utah 1997
62A-4a-602, as renumbered and amended by Chapter 260, Laws of Utah 1994
62A-4a-607, as last amended by Chapters 195 and 329, Laws of Utah 1997
78-3g-103 (Effective 07/01/00), as last amended by Chapter 121, Laws of Utah 1999
78-30-1, as last amended by Chapter 65, Laws of Utah 1990
78-30-1.5, as enacted by Chapter 245, Laws of Utah 1990
78-30-9, as last amended by Chapters 65 and 245, Laws of Utah 1990

Be it enacted by the Legislature of the state of Utah:

Section 1. Section 62A-4a-102 is amended to read:

62A-4a-102. Board of Child and Family Services.

(1) (a) The Board of Child and Family Services, created in accordance with this section and with Sections 62A-1-105 and 62A-1-107, is responsible for establishing by rule, pursuant to Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the policy of the division in accordance with the requirements of this chapter and Title 78, Chapter 3a, regarding abuse, neglect, and dependency proceedings, youth services, and domestic violence services. The board is responsible to see that the legislative purposes for the division are carried out.

(b) (i) Effective July 1, 1994, the governor shall appoint, with the advice and consent of the Senate, 11 members to the Board of Child and Family Services.

(ii) Except as required by Subsection (1)(b)(iii), as terms of current board members expire, the governor shall appoint each new member or reappointed member to a four-year term.

(iii) Notwithstanding the requirements of Subsection (1)(b)(ii), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.

(c) Two members of the board shall be persons who are or have been consumers, two members of the board shall be persons who are actively involved in children's issues specifically related to abuse and neglect, one member shall be a licensed foster parent, one member shall be a recognized expert in the social, developmental, and mental health needs of children, one member shall be a physician licensed to practice medicine in this state who is also a board certified pediatrician and who is an expert in child abuse and neglect, and one member shall be an adult relative of a child who is or has been in the foster care system.

(d) Six members of the board are necessary to constitute a quorum at any meeting.

(e) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(2) (a) Members shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(b) Members may decline to receive per diem and expenses for their service.

(3) The board shall:

(a) approve fee schedules for programs within the division;

(b) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, establish, by rule, [~~procedures for developing its~~] policies to ensure that private citizens, consumers, foster parents, private contract providers, allied state and local agencies, and others are provided with an opportunity to comment and provide input regarding any new policy or proposed revision of an existing policy; and

(c) provide a mechanism for systematic and regular review of existing policy and for consideration of policy changes proposed by the persons and agencies described in Subsection (3)(b).

(4) (a) The board shall establish a three-member Consumer Hearing Panel to act independently of the board and the division, and to be the sole and final decision-making body to hear, resolve, and make recommendations regarding consumer complaints relating to the division. The board may appoint two alternates to serve on the Consumer Hearing Panel in the event that one or more of the members is unable to serve at any given time. This section does not restrict or limit access to the courts for any person, or override Title 62A, Chapter 2, Licensure of Programs and Facilities, or Title 67, Chapter 19, Utah State Personnel Management Act.

(b) The Consumer Hearing Panel may not include any employees of the division.

(c) Prior to July 1, 2000, the Consumer Hearing Panel shall establish procedures that:

(i) provide for reasonable notice of panel hearings to the appropriate consumers;

(ii) require both the division and the consumer to present their respective information, testimony, or evidence at the same hearing unless, after reasonable notice, the consumer fails or refuses to appear at the scheduled panel hearing; and

(iii) affirm the right of affected consumers to be provided with pertinent information regarding the substance of the division's position, testimony, or evidence either prior to or at the scheduled panel hearing.

~~(c)~~ (d) The Consumer Hearing Panel shall report its recommendations to the board, the division, and the Legislative Oversight Panel described in Section 62A-4a-207. The division shall comply with the recommendations of the Consumer Hearing Panel.

~~[(d)]~~ (e) The department shall provide staff to the Consumer Hearing Panel.

~~[(e)]~~ (f) (i) Members of the panel shall receive a per diem allowance for each day or portion of a day spent in performing the duties of the panel, and shall be reimbursed for all necessary travel expenses.

(ii) The per diem reimbursement described in Subsection ~~[(e)]~~ (4)(f)(i) may not exceed 75 days for any one individual panel member in any fiscal year.

(5) The board may create state advisory committees to advise it concerning programs offered by the Division of Child and Family Services. The board shall provide each committee with a specific charge in writing.

(6) The board shall establish policies for the determination of eligibility for services offered by the division in accordance with this chapter. The division may, by rule, establish eligibility standards for consumers.

(7) The board shall adopt and maintain rules and policies regarding placement for adoption or foster care that are consistent with, and no more restrictive than, applicable statutory provisions.

Section 2. Section **62A-4a-602** is amended to read:

62A-4a-602. Licensure requirements -- Prohibited acts.

(1) No person, agency, firm, corporation, association, or group children's home may engage in child placing, or solicit money or other assistance for child placing, without a valid license issued by the Office of Licensing, in accordance with Chapter 2 of this title. When a child placing agency's license is suspended or revoked in accordance with that chapter, the care, control, or custody of any child who has been in the care, control, or custody of that agency shall be transferred to the division.

(2) (a) An attorney, physician, or other person may assist a parent in identifying or locating a person interested in adopting the parent's child, or in identifying or locating a child to be adopted. However, no payment, charge, fee, reimbursement of expense, or exchange of value of any kind, or promise or agreement to make the same, may be made for that assistance.

(b) An attorney, physician, or other person may not:

(i) issue or cause to be issued to any person a card, sign, or device indicating that he is available to provide that assistance;

(ii) cause, permit, or allow any sign or marking indicating that he is available to provide that assistance, on or in any building or structure;

(iii) announce or cause, permit, or allow an announcement indicating that he is available to provide that assistance, to appear in any newspaper, magazine, directory, or on radio or television;
or

(iv) advertise by any other means that he is available to provide that assistance.

(3) Nothing in this part precludes payment of fees for medical, legal, or other lawful services rendered in connection with the care of a mother, delivery and care of a child, or lawful adoption proceedings; and no provision of this part abrogates the right of procedures for independent adoption as provided by law.

(4) In accordance with federal law, only agents or employees of the division and of licensed child placing agencies may certify to the United States Immigration and Naturalization Service that a family meets the division's preadoption requirements.

(5) (a) Beginning May 1, 2000, neither a licensed child placing agency nor any attorney practicing in this state may place a child for adoption, either temporarily or permanently, with any individual or individuals that would not be qualified for adoptive placement pursuant to the provisions of Sections 78-30-1, 78-30-1.5, and 78-30-9.

(b) Beginning May 1, 2000, the division, as a licensed child placing agency, may not place a child in foster care with any individual or individuals that would not be qualified for adoptive placement pursuant to the provisions of Sections 78-30-1, 78-30-1.5, and 78-30-9. However, nothing in this Subsection (5)(b) limits the placement of a child in foster care with the child's biological or adoptive parent.

(c) Beginning May 1, 2000, with regard to children who are in the custody of the state, the division shall establish a policy providing that priority for foster care and adoptive placement shall be provided to families in which both a man and a woman are legally married under the laws of this state. However, nothing in this Subsection (5)(c) limits the placement of a child with the child's biological or adoptive parent.

Section 3. Section **62A-4a-607** is amended to read:

62A-4a-607. Promotion of adoption -- Agency notification of potential adoptive parents -- DCFS utilization of those parents.

(1) (a) The division and all agencies licensed under this part shall promote adoption when that is a possible and appropriate alternative for a child. Specifically, in accordance with Section 62A-4a-205.6, the division shall actively promote the adoption of all children in its custody who have a final plan for termination of parental rights pursuant to Section 78-3a-312, or a permanency goal of adoption.

(b) Beginning May 1, 2000, the division may not place a child for adoption, either temporarily or permanently, with any individual or individuals who do not qualify for adoptive placement pursuant to the requirements of Sections 78-30-1, 78-30-1.5, and 78-30-9.

(2) The division shall obtain or conduct research of prior adoptive families to determine what families may do to be successful with their adoptive children and shall make this research available to potential adoptive parents.

(3) (a) On or before July 1, 1997, each agency licensed under this part shall provide all potential adoptive parents who have applied for adoption with that agency with information regarding all children in the custody of the division who have a permanency goal of adoption and who are eligible for adoption. That notification shall include information regarding adoption subsidies, ongoing medical and mental health coverage for the adopted child, training for adoptive parents, and continued support for adoptive parents pursuant to Section 62A-4a-205.6.

(b) The notification and information provided pursuant to Subsection (3)(a) shall include a time-limited request for permission from the potential adoptive parents to provide the division with their names. With regard to those parents who grant permission, the agency shall provide the division with those names within ten calendar days of receiving permission. Upon receipt of those names, the division shall consider the suitability of those persons as potential adoptive parents for children in the custody of the division, provide the agency with the names and complete case histories of appropriate children, and provide the training and support described in Subsection 62A-4a-205.6(4).

Section 4. Section **78-3g-103 (Effective 07/01/00)** is amended to read:

78-3g-103 (Effective 07/01/00). Foster care citizen review boards -- Membership --

Responsibilities -- Periodic reviews.

(1) Within appropriations from the Legislature, foster care citizen review boards shall be established in each Juvenile Court district in the state, to act as the panels described in 42 U.S.C. Sections 675(5) and (6), which are required to conduct periodic reviews unless court reviews are conducted.

(2) (a) The committee shall appoint seven members to each board. Five of those members shall be parents.

(b) Five members of a board constitute a quorum, and an action of a majority of the quorum constitutes the action of the board.

(c) A board member may not be an employee of the division or the juvenile court.

(d) Board members shall be representative of the ethnic, cultural, religious, socio-economic, and professional diversity found in the community.

(e) A board may elect its own chair, vice chair, and other officers as it considers appropriate.

(f) The division may designate a representative to provide technical advice to the board regarding division policy and procedure.

(3) With regard to each child in its custody, the division shall provide the appropriate boards with access to all records maintained by the division, and shall ensure that each appropriate board is provided with the entire case file regarding each of its pertinent cases.

(4) (a) In districts or areas where foster care citizen review boards have been established, periodic reviews either by the court or by a foster care citizen review board, shall be conducted with regard to each child in the division's custody no less frequently than once every six months, in accordance with Section 78-3a-313 and 42 U.S.C. Sections 675(5) and (6). In cases where the court has conducted a six month review hearing, a foster care citizen review board shall also conduct a review within 12 months from the date of the child's removal from his home.

(b) In accordance with federal law and with Subsection 78-3a-314(1), periodic reviews conducted by foster care citizen review boards shall be open to the participation of the child's natural parents, foster parents, preadoptive parents, and any relative providing care for the child. Notice shall be provided to those persons pursuant to Subsection 78-3a-314(1).

(c) At each periodic review, foster care citizen review boards shall:

(i) provide opportunities for separate interviews with parents and foster parents in each case;
and

(ii) conduct an individual interview with each affected child who is old enough to participate in an interview, unless the child affirmatively chooses not to participate. At the child's request, he may be accompanied by a support person of his choice, so long as the support person is not an alleged perpetrator.

~~(c)~~ (d) Boards may review additional abuse, neglect, or dependency cases or plans at the request of the court.

(5) Each board shall prepare a dispositional report regarding the child's case and plan. The periodic review and the dispositional report shall be consistent with the provisions of Title 62A, Chapter 4a, Child and Family Services, and Title 78, Chapter 3a, Part 3, Abuse, Neglect, and Dependency Proceedings, and shall include at least the following considerations:

(a) the extent to which the plan's objectives have been implemented or accomplished by the parent, the child, and the division;

(b) whether revisions to the plan are needed, and if so, how the plan should be revised;

(c) the extent to which the division has provided the services and interventions described in the plan, and whether those services and interventions are assisting, or will assist, the parent and child to achieve the plan's objectives within the statutory time limitations;

(d) the extent to which the parent and child have willingly and actively participated in the interventions described in the plan;

(e) the continuing necessity for and appropriateness of the child's placement;

(f) the extent of progress that has been made toward alleviating or mitigating the causes necessitating the child's removal or continued placement;

(g) the primary permanency goal and the concurrent permanency goal for the child and, if a final permanency plan has been established, an opinion regarding the appropriateness of that permanency plan; and

(h) a determination regarding whether the statutory time limitations described in Title 78,

Chapter 3a, Part 3, have been met, specifically, whether the 12 month limitation on reunification services required by Section 78-3a-311 has been complied with. The board shall also render an opinion regarding when it estimates that the child will achieve permanency.

(6) (a) Each board shall submit its dispositional report to the court, the division, and to all parties to an action within 30 days after a case is reviewed by the board.

(b) The board's dispositional report shall be filed with the court, and shall be made a part of the court's legal file. The dispositional report shall be received and reviewed by the court in the same manner as the court receives and reviews the reports described in Section 78-3a-505. The report by a board, if determined to be an ex parte communication with a judge, shall be considered a communication authorized by law. Foster care citizen review board dispositional reports may be received as evidence, and may be considered by the court along with other evidence. The court may require any person who participated in the dispositional report to appear as a witness if the person is reasonably available.

(c) Whenever a court makes a determination or finding it shall provide for notice to the committee regarding that determination or finding. The committee shall provide that information to the applicable board.

(7) Members of boards may not receive financial compensation or benefits for their services. Members may not receive per diem or expenses for their service, except that:

(a) members may be reimbursed for mileage on days that they are involved in training, at rates established by the Division of Finance; and

(b) members may be provided with a meal on days that they serve on a board.

(8) Boards are authorized to receive funds from public and private grants and donations in accordance with the requirements described in Subsection 78-3g-102(8).

(9) In districts or areas where foster care citizen review boards have not been established, either the court or the Division of Child and Family Services shall conduct the reviews in accordance with the provisions of Subsections (4)(a) and (b), and Section 78-3a-313.

Section 5. Section **78-30-1** is amended to read:

78-30-1. Who may adopt -- Adoption of minor -- Adoption of adult.

(1) Any minor child may be adopted by an adult person, in accordance with the provisions and requirements of this section and this chapter.

(2) Any adult may be adopted by [~~any other~~] another adult. However, all provisions of this chapter apply to the adoption of an adult just as though the person being adopted were a minor, except that consent of the parents of an adult person being adopted is not required.

(3) (a) A child may be adopted by:

(i) adults who are legally married to each other in accordance with the laws of this state, including adoption by a stepparent; or

(ii) any single adult, except as provided in Subsection (3)(b).

(b) A child may not be adopted by a person who is cohabiting in a relationship that is not a legally valid and binding marriage under the laws of this state. For purposes of this Subsection (3)(b), "cohabiting" means residing with another person and being involved in a sexual relationship with that person.

Section 6. Section **78-30-1.5** is amended to read:

78-30-1.5. Legislative intent -- Best interest of child.

(1) It is the intent and desire of the Legislature that in every adoption the best interest of the child should govern and be of foremost concern in the court's determination.

(2) The court shall make a specific finding regarding the best interest of the child, in accordance with Section 78-30-9 and the provisions of this chapter.

Section 7. Section **78-30-9** is amended to read:

78-30-9. Decree of adoption -- Best interest of child -- Legislative findings.

(1) The court shall examine each person appearing before it in accordance with this chapter, separately, and, if satisfied that the interests of the child will be promoted by the adoption, it shall enter a final decree of adoption declaring that the child is adopted by the adoptive parent or parents and shall be regarded and treated in all respects as the child of the adoptive parent or parents.

(2) The court shall make a specific finding regarding the best interest of the child, taking into consideration information provided to the court pursuant to the requirements of this chapter relating to the health, safety, and welfare of the child and the moral climate of the potential adoptive

placement.

(3) (a) The Legislature specifically finds that it is not in a child's best interest to be adopted by a person or persons who are cohabiting in a relationship that is not a legally valid and binding marriage under the laws of this state. Nothing in this section limits or prohibits the court's placement of a child with a single adult who is not cohabiting as defined in Subsection (3)(b).

(b) For purposes of this section, "cohabiting" means residing with another person and being involved in a sexual relationship with that person.

Section 8. Effective date.

This act takes effect on May 1, 2000, except that Section 78-3g-103 takes effect on July 1, 2000.